

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6866

BILL NUMBER: HB 1134

NOTE PREPARED: Feb 22, 2008

BILL AMENDED: Feb 21, 2008

SUBJECT: Sex Offenders.

FIRST AUTHOR: Rep. VanDenburgh

FIRST SPONSOR: Sen. Steele

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *New Conditions and Additional Registration Requirements for Sex Offenders on Probation or Parole* – It provides that, as a condition of probation or parole, a sex offender: (1) must consent to the search of the sex offender's computer at any time; (2) must permit installation on the sex offender's computer or device with Internet capability of hardware or software to monitor the sex offender's Internet usage; (3) must be prohibited by a probation or parole officer from using or accessing certain web sites, chat rooms, or instant messaging programs; and (4) may not delete, erase, or tamper with information on the sex offender's computer that relates to Internet usage. It specifically provides that law enforcement officials may seize computers, cellular telephones, and other equipment used to commit or facilitate, or intended to be used to commit or facilitate, sex crimes. It makes numerous changes to the sex and violent offender registration requirements, including requirements related to providing electronic mail and other Internet usernames. It requires a sex or violent offender to report the offender's electronic mail address and certain Internet usernames.
- B. *Department of Education (DOE), School Corporations, and Internet Safety* – It requires a school corporation to include a mandatory instructional unit developed by the Department of Education about safely using the Internet for grades 3 and above.
- C. *Classification System* – It establishes a three-tier system for sex offenders and requires offenders: (1) in Tier 3 to register for life; (2) in Tier 2 to register for 25 years; and (3) in Tier 1 to register for 15 years. It permits Tier 1 offenders to reduce their registration period by five years if they meet certain requirements, and establishes a judicial procedure to implement this reduction. It classifies persons who were convicted of Class A or Class B felonies as violent offenders if the difference between the person's release date and the person's post incarceration supervision is less than 60 days

due to facility rule violations, and provides that violent offenders are required to register for life. It requires the Department of Correction (DOC) to determine the appropriate classification and registration period for sex or violent offenders and establishes a judicial procedure to challenge the department's determination. It specifies that persons who commit criminal deviate conduct in a correctional facility are required to register as a sex or violent offender. It specifies the court in which a petition must be filed to remove the designation as a sexually violent predator or an offender against children, and provides that the petitioner has the burden of proving that the designation should be removed.

- D. *Notification Requirements for Local Law Enforcement Agencies* – It requires local law enforcement to notify schools, public housing agencies, and other organizations in each county a sex offender registers when the offender registers or updates a registration.
- E. *Sex Offender Exclusion Zones* – It specifies that, for purposes of sex offender exclusion zones, the distance between the residence of the sex offender, if applicable, and another piece of property is measured from the property line of the sex offender's residence to the property line of the other piece of property. It requires a court or the parole board to prohibit, as a condition of probation or parole, a sex offender from residing or loitering within 500 feet of school property, a youth program center, or a public park if children are present.
- F. *Penalty Provisions and New Offenses*- The bill provides increased penalties for child molesting, added offenses under child seduction, and new penalties for failure to report in person; sex offender residency offense; sex offender internet offense; inappropriate communication with a child; photographic voyeurism; and child stalking.
- G. It exempts certain individuals and provides a good faith defense.

Effective Date: July 1, 2008.

Explanation of State Expenditures: (Revised) *New Conditions and Additional Registration Requirements for Sex Offenders on Probation or Parole:* The Department of Correction does not expect any new costs to collect additional information about email addresses and Internet usernames.

(Revised) *Development of Internet Safety Curriculum:* The Department of Education would be required to develop guidelines concerning an Internet safety curriculum. This provision will increase the workload of the DOE to provide guidance to school corporations regarding the following topics: safe online communication; privacy protection; cyberbullying; viewing inappropriate material; file sharing; the importance of open communication with responsible adults; and any other material that the department or the state board finds will assist children in using the Internet safely.

(Revised) *Classification System* – Under current law, Indiana has a ten-year period for registration for sex offenders and a lifetime requirement for sexually violent predators. As proposed, this bill would put Indiana in compliance with federal requirements for the Adam Walsh Act requiring offenders to register for a minimum of 15 years and adding a second tier of offenders who would be required to register for 25 years. Tier III offenders would be required to register for life. Any additional costs for the local law enforcement agencies will depend on the number of offenders who will be required to register for longer periods of time.

In December 2007, 9,092 persons were required to register in the sex offender registry. The following table shows which felonies would be in Tiers I, II, and III.

Proposed Tiers by Felony Level and Offense					
Offense		Class A	Class B	Class C	Class D
Murder _____	Tier III				
Voluntary Manslaughter		Tier III			
Rape or criminal deviate conduct IC 35-42-4-1,2		Tier III	Tier III		
Child molesting IC 35-42-4-3 (a)			Tier III		
Child molesting IC 35-42-4-3 (a)(1)(2)(3)		Tier III			
Child molesting IC 35-42-4-3 (b)				Tier II	
Child molesting IC 35-42-4-3 (b) (1)(2)(3)		Tier III			
Child exploitation IC 35-42-4-4 (b)				Tier II	
Child Pornography IC 35-42-4-4 (c)					Tier I
Vicarious sex gratification IC 35-42-4-5 (a)					Tier II
Vicarious sex gratification IC 35-42-4-5 (a)(1)				Tier III	
Vicarious sex gratification IC 35-42-4-5 (a)(2)			Tier III		
Vicarious sex gratification IC 35-42-4-5 (a)(3)		Tier III			
Vicarious sex gratification IC 35-42-4-5 (b)		Tier III	Tier III	Tier I	
Vicarious sex gratification IC 35-42-4-5 (c)					Tier I
Sexual conduct in presence of minor IC 35-42-4-9(c)					Tier I
Child solicitation IC 35-42-4-6(b)			Tier II	Tier II	Tier II
Child solicitation IC 35-42-4-6(c)			Tier II	Tier II	Tier II
Child seduction IC 35-42-4-7					Tier II
Sexual misconduct with a minor IC 35-42-4-9(a)				Tier I	
Sexual misconduct with a minor IC 35-42-4-9(a)(1)			Tier II		
Sexual misconduct with a minor IC 35-42-4-9(a)(2)		Tier III			
Sexual misconduct with a minor IC 35-42-4-9(b)					Tier I
Sexual misconduct with a minor IC 35-42-4-9(b)(1)				Tier II	
Sexual misconduct with a minor IC 35-42-4-9(b)(2)			Tier III		
Sexual conduct in presence of minor IC 35-42-4-9(c)					
Incest IC 35-46-1-3 if victim younger than 16			Tier III	Tier I	
Incest IC 35-46-1-3 if victim 16 or older				Tier II	
Sexual battery IC 35-42-4-8 (a) if victim younger than 14				Tier III	Tier III
Sexual battery IC 35-42-4-8 (b)if victim between 14 & 18				Tier II	Tier II
Kidnaping of person younger than 18		Tier III			
Criminal confinement of person less than 18			Tier III		
Possession of child pornography					Tier I
Promoting Prostitution IC 35-45-4-4			Tier II		
Promoting Human Trafficking IC 35-42-3.5-1(a)(1)					
Promoting Human Trafficking IC 35-42-3.5-1(a)(2)			Tier II		
Sexual Trafficking of minor IC 35-42-3.5-1(b)		Tier II			
Human Trafficking if victim < 18 IC 35-42-3.5-1(c)				Tier II	

New or Increased Penalties: The following table shows the proposed change in sex offender crimes.

Offense	Description	Current Penalty	New Penalty
Failure to report in person as sex offender	If sex offender fails to report in person to local law enforcement agency when required to do so under current statute	Possibly technical violation for offenders on probation or parole	Class D Felony
Child Molesting	If child is compelled to submit to fondling or touching by force or the threat of force	Class C Felony	Class B Felony
Sex Offender Residency Offense	If convicted sex offenders knowingly or intentionally reside or loiter within specified distance of charter school, child care center, child care home, or child care ministry.	No crime	Class D felony 500 feet
Sex Offender Residency Offense	If convicted sex offenders knowingly or intentionally reside or loiter within specified distance of a public or private school, youth program center, or public park.	Class D felony 1,000 feet	Class D felony 500 feet
Sex Offender Internet Offense	If convicted sex offenders use social networking Internet web sites, instant messaging or chat room programs that offender knows are frequented by children and if offender contacts a child or a person the offender believes is a child through the website or program.	Possibly technical violation for offenders on probation or parole	Class D felony
Child Offender Trespassing	An offender against children who knowing that children are present, enters school property, a public park, or a youth program center		Class D felony
Child Seduction	If armed forces recruiter engages in sexual conduct with child between 16 years and 18 years of age who attends the public or nonpublic school to which the armed forces recruiter has been assigned	No crime	Class D felony
Inappropriate Communication with a Child	Adults at least 21 years of age who knowingly or intentionally communicate about sexual activity with a child less than 14 to gratify sexual desires of adult or the child, or to entice the child to meet the adult in another location.	Class D child solicitation in some circumstances	Class B misdemeanor; Class A misdemeanor if using computer network
Photographic Voyeurism	Photographing another person who is nude without the person's consent in an area in which the person has a reasonable expectation of privacy.	No crime	Class B misdemeanor

Offense	Description	Current Penalty	New Penalty
Photographic Voyeurism	Photographing another person who is nude who gives consent and knowingly or intentionally failing to destroy the image that was photographed after being requested to do so by the subject of the photograph	No crime	Class C misdemeanor
Photographic Voyeurism	Photographing another person who is nude without consent or if consent was withdrawn and showing the picture to another person without the subject's consent	No crime	Class A misdemeanor
Photographic Voyeurism	Photographing another person who is nude without consent or if consent was withdrawn and publishing the picture or making the picture available on the internet	No crime	Class D felony
Photographic Voyeurism	Photographing another person who is nude without consent or if consent was withdrawn and publishing the picture or making the picture available on the internet with a prior unrelated conviction for a similar offense	No crime	Class C felony
Child Stalking	An adult at least 21 years of age who repeatedly follows, pursues, or attempts to contact a child less than 10 years of age	No crime	Class D felony

The following table describes the range in periods of incarceration associated with the felonies and misdemeanors shown above.

<u>Offense</u>	<u>Potential Incarceration</u>	<u>Potential Criminal Fine</u>
Class C misdemeanor	Up to 60 days (in county jail)	\$500
Class B misdemeanor	Up to 180 days (in county jail)	\$1,000
Class A misdemeanor	Up to one year (in county jail)	\$5,000
Class D felony	Six months to three years (in DOC facility) or reduction to Class A misdemeanor	\$10,000
Class C felony	Two to eight years (in DOC facility)	\$10,000
Class B felony	Six to twenty years (in DOC facility)	\$10,000

The average expenditure to house an adult offender was \$19,185 in FY 2007.

Explanation of State Revenues: *Registration and Consent Concerning Internet Use* – By requiring sex offenders and sexually violent predators to register and update email addresses and Internet usernames in the

sex offender registry and to execute waivers allowing access to the Department of Correction and the State Police, the bill may allow the state to receive or retain federal funds. [The Adam Walsh Child Protection and Safety Act of 2006 provides funding to a jurisdiction based on implementation of the Act and allows a jurisdiction to lose 10% of funding from the Edward Byrne Memorial State Justice Assistance Grant Program. Indiana is expected to receive \$1.8 M from the Byrne Grant in FFY 2008.]

(Revised) *Enhanced Penalty; Sex Offender Residency Offense; and Sex Offender Internet Offense* – If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. See previous table concerning criminal fines for felonies and misdemeanors. A criminal costs fee of \$120 is assessed when a criminal defendant is determined to be guilty.

Explanation of Local Expenditures: (Revised) *Notification Requirements for Local Law Enforcement Agencies* – When a sex or violent offender registers in the county where the sex or violent offender is registered, the local law enforcement agency would be required to notify each school, day care center, head start program, public housing agency, social service entity responsible for protecting minors in the child welfare system, and volunteer organization in which contact with a minor or other vulnerable individual might occur. Depending on the size of the sheriff's support staff and the number of schools, centers, and programs in a particular county, the county may incur some initial costs in time and equipment to develop a notification system.

(Revised) *Development of Internet Safety Curriculum* – School corporations are required to provide instruction to students starting in the 3rd grade regarding Internet safety. This provision will increase the workload of school staff. Actual workload increases will depend on administrative decisions made by the state Department of Education.

(Revised) *New Conditions and Additional Registration Requirements for Sex Offenders on Probation or Parole* – Offenders not complying with these conditions could be recommitted to DOC facilities, increasing the DOC's offender population.

Registration and Consent Concerning Internet Use – The bill could increase costs for local law enforcement to collect information concerning email addresses or Internet usernames. However, the legislative body of a county may pass an ordinance for an annual fee of up to \$50 and a change of address fee of up to \$5 to defray costs.

Enhanced Penalty; Sex Offender Residency Offense; and Sex Offender Internet Offense – If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Enhanced and New Crimes* – If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: DOC; DOE; State Board of Education.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; DOC.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.